# A CONSTITUTIONAL CHALLENGE TO MANDATORY AUTO INSURANCE ON PUBLICLY FUNDED ROADS

*A Proposal for Legislative Reform and Judicial Review*

Authored by The Ashen Scribe

## Preamble

This document is a formal challenge to the constitutionality of state-mandated automobile insurance laws as applied to the use of publicly funded roads in the United States of America. It is submitted not in opposition to personal responsibility or civil liability, but in defense of the fundamental constitutional rights of every American citizen who contributes, through compelled taxation, to the construction and maintenance of the roads they are then penalized for using without purchasing a third-party private product. This is a layered systemic failure of constitutional principle, and it demands examination.

## Section I: Statement of the Issue

The following chain of compelled financial obligations is imposed upon every American citizen who uses a public road:

1. Federal and state income taxes are levied on earned wages.
2. Sales and use taxes are assessed on the purchase of a vehicle.
3. Property taxes are levied annually on that vehicle in many states.
4. Fuel taxes are collected at every fill-up, explicitly designated for road funding.
5. Annual registration fees are collected as a condition of operating the vehicle.
6. Mandatory automobile insurance premiums are required from a private corporation, on penalty of fines or imprisonment.
7. State and local taxes are then assessed on those mandatory insurance premiums.

Each of these obligations is imposed under threat of criminal penalty. Cumulatively, they represent a system in which a citizen is taxed to build a road, taxed to own a vehicle, taxed to fuel it, taxed to register it, compelled

to purchase a private product to access the road, and then taxed on that compelled purchase. This document argues that this chain, evaluated as a unified system, violates multiple provisions of the United States Constitution.

## Section II: Constitutional Grounds

### A. The Fifth Amendment — Due Process and Liberty of Movement

In Kent v. Dulles, 357 U.S. 116 (1958), the Supreme Court held that "the right to travel is a part of the 'liberty' of which a citizen cannot be deprived without due process of law under the Fifth Amendment." The deprivation of access to publicly funded roads through financial barriers that require purchase of private products constitutes precisely such a deprivation. The citizen has already paid for the road. Requiring an additional private purchase to access it is a due process violation.

### B. The Privileges and Immunities Clause — Article IV, Section 2

In Ward v. Maryland, 79 U.S. 418 (1870), the Court declared that the Privileges and Immunities Clause "plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union." In Paul v. Virginia, 75 U.S. 168 (1869), freedom of movement was defined as the "right of free ingress into other States, and egress from them." Mandatory insurance requirements that vary by state, and which impose criminal penalties for non-compliance, create discriminatory barriers to this protected movement.

### C. The Unconstitutional Conditions Doctrine

The unconstitutional conditions doctrine holds that the government may not condition access to a public benefit on the surrender of a constitutional right, nor may it compel a citizen to purchase a private product as a prerequisite to accessing publicly funded infrastructure. The citizen has a property interest in the roads they have funded through taxation. Denying access to that property without an additional private purchase constitutes an unconstitutional condition.

### D. The Commerce Clause — NFIB v. Sebelius (2012)

In NFIB v. Sebelius, 567 U.S. 519 (2012), the Supreme Court ruled that Congress may not compel a citizen to engage in commerce as a condition of lawful existence in society. The individual insurance mandate in the Affordable Care Act was struck down on precisely this basis. Mandatory automobile insurance applies identical compelled-commerce logic: a citizen is required by law to purchase a private product simply to participate in the basic functions of modern life. The constitutional reasoning that invalidated the ACA mandate applies with equal or greater force to mandatory auto insurance.

### E. The Takings Clause — Fifth Amendment

Public roads are built and maintained with taxpayer funds. The citizen who pays those taxes holds a legitimate property interest in access to the infrastructure they have funded. Denying that access absent an additional private purchase constitutes a regulatory taking without just compensation, in violation of the Fifth Amendment's Takings Clause.

## Section III: The Argument of Modern Necessity

Courts have historically permitted road regulations by distinguishing the right to travel from the mode of travel, arguing that alternative transportation options preserve the right even when a specific mode is regulated. This reasoning was marginally defensible in the early twentieth century. It is constitutionally indefensible in the modern era.

In contemporary American society, the automobile and the public road are not optional infrastructure. They are the primary means by which citizens access employment, medical care, food, education, and commerce. In the majority of American cities, counties, and rural communities, no viable public transportation alternative exists. The theoretical availability of alternatives is not a constitutional substitute for practical access.

What was a regulable privilege in 1920 is a functional necessity in 2025. Courts must recognize that constitutional protections do not diminish as society’s dependence on a resource increases. They must increase. To hold otherwise is to permit the government to condition access to the basic requirements of modern life on compelled participation in a private commercial market.

## Section IV: The Cumulative Burden Argument

American jurisprudence has consistently evaluated financial burdens on constitutional rights in isolation. Each individual tax, fee, or requirement is assessed independently against a constitutional standard, and each survives because it appears, in isolation, to be a minimal burden. This analytical framework is constitutionally insufficient when applied to a system of layered, cumulative obligations.

The cumulative burden on a citizen who wishes to use a public road is as follows:

- Income already taxed before any road-related expenditure.
- Vehicle purchase taxed at point of sale.
- Vehicle ownership taxed annually as property.
- Fuel taxed at every purchase, with proceeds directed to road funding.
- Annual registration fee assessed for road access.
- Mandatory insurance premium paid to a private corporation.

- That mandatory premium taxed by the state.

No court has been asked to evaluate this system as a whole. This document demands that it be. The cumulative effect of these obligations on a working citizen of ordinary means is not negligible. It is prohibitive. And it is constitutionally impermissible when its foundation is a right — the right to travel — that the Supreme Court has unanimously affirmed.

## Section V: The Compelled Taxation Loop

Perhaps the most constitutionally significant element of this system is the taxation of mandatory insurance premiums. The state mandates that citizens purchase insurance. The state then taxes those mandated premiums. This creates a closed revenue loop in which the government generates income from a requirement it imposed.

This is, by functional definition, an indirect tax — one that was never proposed as a tax, never voted upon as a tax, and never subjected to the constitutional limitations that govern direct taxation. It circumvents the legislative process for taxation by disguising revenue generation as consumer protection regulation. The government profits twice: once through the mandate it created, and once through the tax it levies on the compelled purchase. This arrangement demands constitutional scrutiny.

## Section VI: Proposed Relief

The undersigned does not argue that injured parties should be left without remedy, nor that civil liability for negligent driving should be eliminated. The argument is that the mechanism by which protection is provided must not violate the constitutional rights of the citizen. The following alternatives are proposed:

### Option A: Strike Mandatory Insurance Statutes

State mandatory insurance statutes should be struck as unconstitutional compelled commerce under the reasoning of NFIB v. Sebelius. Civil liability for negligent operation of a vehicle should remain fully intact, ensuring injured parties retain their right to legal remedy without requiring every citizen to fund a private insurance industry as a condition of road access.

### Option B: State-Funded Road Injury Compensation Pool

Existing road taxes — fuel taxes, registration fees, and related revenues — should be redirected in part to fund a state-administered road injury compensation pool. This would provide the protective function of insurance without compelling citizens to purchase a private product. The public already funds the roads. They should fund the safety net as well.

### Option C: Voluntary Insurance with Full Civil Liability

Insurance should be made voluntary. Citizens who elect to carry it retain the protections it provides. Those who do not carry it remain fully subject to civil liability for damages caused by their negligence. This preserves individual freedom of choice while maintaining the legal accountability that protects third parties.

## Section VII: Submission Targets

This proposal should be submitted to the following:

- Your state representative and state senator — for legislative reform introduction.
- Your state attorney general — for formal constitutional review.
- The Institute for Justice (ij.org) — a public interest law firm that litigates compelled commerce and constitutional rights cases at no cost.
- The Cato Institute — for amicus brief support in related litigation.
- Federal representatives — for pressure toward federal constitutional review of state insurance mandates.

## Closing Statement

The right to travel is not a courtesy extended by the state. It is a fundamental constitutional right affirmed unanimously and repeatedly by the Supreme Court of the United States. The roads upon which that right is exercised are not the property of insurance corporations or state agencies. They are public property, built with public money, belonging to the people who paid for them.

The system described in this document does not protect citizens. It extracts from them. It taxes their labor, taxes their purchases, taxes their property, taxes their fuel, charges them registration, compels them to buy a private product, and taxes that product. It does all of this under threat of criminal penalty, applied to a constitutional right.

This is not regulation. This is a revenue engine built on the back of a right. And it must be challenged.

***The Ashen Scribe***

*Independent Author & Constitutional Advocate*

2025